

**Murdo, Patricia**

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**Subject:** FW: Assistance with Air Ambulance Provider Lawsuit

**From:** Jeff Frazier  
**Sent:** Tuesday, June 09, 2015 10:15 PM  
**To:** Murdo, Patricia  
**Subject:** fw: Assistance with Air Ambulance Provider Lawsuit

Pat,  
John Maxness recommended that I forward this email to you. I sent it to the North Dakota AG earlier in the week. Please call me at 406 531 0512 if you have any questions.

Best regards,  
Jeff Frazier

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**From:** "Jeff Frazier"  
**Sent:** Monday, June 8, 2015 8:34 AM  
**To:** ndag@nd.gov  
**Subject:** Assistance with Air Ambulance Provider Lawsuit

Greetings,

I note from the below article that an air ambulance provider is suing the State of North Dakota over House Bill 1255. The air ambulance provider claims protection against state regulation under the Airline Deregulation Act.

The issue of extravagantly high air ambulance bills has come to the fore over the past couple of years. Coupled with outrageously high billed charges is air ambulance providers' aggressive billing tactics. Many states have heard the voices of their citizens and are attempting to take action to prevent these practices.

The Airline Deregulation Act has recently been breached in a Texas lawsuit involving workers compensation carriers. I am not an attorney, but the McCarron-Ferguson Act was used to (I believe the word is "pre-empt") the ADA. The attorney firm representing workers compensation carriers is:

Graves, Dougherty, Hearon & Moody, P.C.  
401 Congress Avenue, Suite 2200  
Austin, TX 78701  
Attn: Matt Baumgartner

Other states currently involved in regulating air ambulance providers are South Carolina, Montana, Wyoming. The Assistant Attorney General of Wyoming, Mick Finn (yes, that's his real name!) is working on this issue and is being assisted by the firm mentioned above.

The important thing to keep in mind with air ambulance services is that these services are marketed, performed, and billed as medical services, not air transport services. States do have the authority to regulate medical services. Please see the text at the end of this email.

The Airline Deregulation Act was created to ensure competition in the air carrier business to the benefit of consumers. There is no price competition in the air ambulance business. Air ambulance providers do not view the patient or the payor as their customer. Rather, they view the referral source as the customer. Neither the patient, nor the payor, has any choice of service or are they informed of the price the provider charges (or the price of other providers) prior to transport. There are no market forces at work here.

I offer my services to your office in this matter. I can provide you with strategy help and information on the cost to the provider of performing the service. Many people do not realize that providers often seek reimbursement at levels that amount to a 600-800% margin. I will help you at no cost if the need for my services is limited. If you require more of my time, I will charge you a reasonable rate.

In response to [recommendations](#) (issued in 2009) by the National Transportation Safety Board (NTSB) intended to improve safety in the air medical transport industry, the Federal Aviation Administration (FAA) issued various resource documents regarding helicopter air ambulance safety and operations. (Quick links to these resources are available on the [NASEMSO web site](#).) NTSB safety recommendations A-09-102 and A-09-103 related to the air medical transport of patients with emergency medical conditions were addressed specifically to the Federal Interagency Committee on EMS (FICEMS). New guidelines recently published by the US Department of Transportation (USDOT) refer to medical standards of care that serve primarily a patient objective as “properly within a state’s regulatory authority.” The guidelines outline opportunities for state regulations that address outcomes related to:

- the quality of emergency medical care provided to patients
- requirements related to the qualifications and training of air ambulance medical personnel
- scope of practice and credentialing
- maintenance of medical records, data collection, and reporting
- medically related equipment standards
- patient care environments
- EMS radio communications
- medically related dispatch requirements
- medical transport plans including transport to appropriate facilities
- other medical licensing requirements

*“Guidelines for the Use and Availability of Helicopter Emergency Medical Transport (HEMS)”* describes the regulatory and oversight framework for helicopter air ambulance operations that state emergency medical services (EMS) system planners should consider in developing regulations to help ensure patients receive appropriate medical attention and care. FICEMS recently transmitted these guidelines to the NTSB as a component of its response to A-09-102. [For more information...](#)

**Air ambulance service sues to block new ND law**

By [Patrick Springer](#) on Jun 5, 2015 at 11:47 a.m.